IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC. Plaintiff, v. **CEMEX PUERTO RICO; CANOPY ECOTERRA CORP.; XYZ INSURANCE COMPANIES.** Defendants.	CIVIL NO.: 07- 1658 (JAF) BREACH OF CONTRACT; COLLECTION OF MONIES; and DAMAGES. JURY TRIAL DEMANDED

MOTION IN COMPLIANCE WITH COURT ORDER

TO THE HONORABLE COURT:

NOW APPEARS Plaintiff **AMERICAN WASTE MANAGEMENT AND RECYCLING**, **LLC,** (hereinafter, "AWMR") and through the undersigned attorneys, respectfully **STATES, ALLEGES** and **REQUESTS** as follows:

On August 10, 2007, the Court held a hearing in the above referenced matter, and ordered the parties to meet and attempt to reach an agreement regarding the issue presented in the TRO; mainly, the contents of the containers currently at the CEMEX plant in Ponce. It further instructed them to file a motion detailing their efforts in resolving this controversy by 2:00 in the afternoon today, August 13, 1007. In compliance therewith, Plaintiff herein files the present motion.

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After the hearing with the Court, the parties met and discussed the issues. Plaintiff AWMR proposed that it be allowed a span of three weeks to complete the following specific tasks on the CEMEX site, to wit: to remove its equipment from the site; to remove all the containers from the site (including those containing metals already harvested and loaded), to permit the harvest of the material removed by AWMR readily available at the site both on the ground and attached to the buildings, to secure materials and buildings currently in a precarious, dangerous, and unsafe position due to the sudden removal of AWMR personnel from the CEMEX site, and to effect payment for the metals removed per the terms of the contract. Regarding payment, AWMR offered to consign the monies with the Court once the material is weighed, as agreed to in the contract between the parties.

Ecoterra proposed that the equipment be removed and that the containers be emptied and removed (with the metals remaining on site), but that the proposal carried with it the condition precedent of a complete waiver exonerating it from liability being issued by AWMR.

On Friday, then, the parties agreed on the issue of the removal of the equipment and empty containers from the site, but Defendant Ecoterra refused to release the contents of the containers, and argued that they had no way of "guaranteeing payment" by AWMR. CEMEX argued that they were not letting any containers off site until AWMR and Defendant Ecoterra resolved the dispute.

Today, the parties again conferred via the telephone, having had an opportunity to discuss with their clients the situation during the weekend. AWMR's proposal remained unchanged, since it simply seeks to comply with the terms of its contractual obligations, ensuring each party receives the benefits of the contract. Ecoterra offered a new position, which also carried with it the precondition of a complete waiver and dismissal of this lawsuit. It proposed that AWMR keep the iron and steel in the containers, but that Ecoterra and AWMR split in half (50-50) the copper and aluminum extracted.

AWMR's position is that Ecoterra has no valid claim to the copper or aluminum at the site, and that its offer is more than fair; after all, AWMR would merely be complying with the terms of the contract between the parties, whereby it dismantled (albeit partially before it was terminated) the site, is taking the metals it harvested, and would be effecting payment to Ecoterra for said metals at the agreed upon price of $30.00 per metric ton. Regarding the waiver, AWMR cannot foresee a waiver at this time, since Ecoterra already stole over $250,000 in metal belonging to AWMR several months ago, a fact which led to the rupturing of relations between the parties, and which culminated in filing of the Verified Complaint in this case (docket No. 1). Indeed, the history of theft by Ecoterra from the CEMEX site, with CEMEX personnel aiding and abetting this behavior and was one of the primary reasons why the TRO was being sought.

As explained to the Court at the hearing held on August 10, AWMR sought a TRO in order to secure its property on the site, since Ecoterra had previously stolen containers from the CEMEX site, and CEMEX actually allowed these containers – which had been checked into the CEMEX site as AWMR containers – to exit their site. Consequently, AWMR alleged that the fact that Ecoterra was openly working on the site and extracting materials put in jeopardy AWMR's loaded containers and other materials lying on the site. Today, counsel for Defendants denied that Ecoterra was anywhere near the site where AWMR was extracting its metals, but *on this very morning*, AWMR sources have in fact seen Ecoterra employees precisely in the area where AWMR was extracting its materials from and where its containers are situated in the CEMEX facility. This was the reason why AWMR specifically requested that the loaded containers belonging to AWMR and the material that is lying on the ground already harvested by AWMR not be touched or removed by anyone until the Court had a chance to hear evidence in this case.

AWMR again reiterates that the losses it is suffering are incalculable, due to the fact that the amount of material at the site has not been determined, and the harm to AWMR's reputation is great due to its non-compliance with its other contractual obligations. As discussed in more detail in its Motion for Preliminary Injunction, AWMR has had to refund deposits and has had to respond to queries from its clients regarding AWMR's inability to deliver the scrap metal it contracted to sell to those entities – items indicative of an existing, and continuing, impairment of its reputation and goodwill. This district has held that irreparable harm can occur to an entity's credibility or reputation or good will, as in the case at bar. *See Semaphore Entertainment Group Sports Corp. v. Gonzalez*, 919 F.Supp. 543, 550 (D. Puerto Rico, 1996)("Further, there is compliance with the irreparable harm criteria when the harm is not easily quantifiable, such as when the action that is sought to be enjoined would besmirch plaintiffs' business credibility, reputation, and good will")

In light of the situation outlined above, AWMR respectfully requests that the Court set this case on a fast-track for trial, that the Court further set a short discovery period of thirty (30) days, and that a trial date be set for a date within the next sixty (60) days.

WHEREFORE, AWMR respectfully requests that the Court **DEEM** AWMR in compliance with its Order of August 10, 2007, and that it issue any further relief it deem just and proper under the law.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 13th day of August, 2007.

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